

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240002946

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. A review of the applicant's service records show:

- a. He enlisted the Regular Army on 30 September 1980.
- b. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) shows the applicant received nonjudicial punishment (NJP) on 2 June 1981 for being disrespectful in language toward a noncommissioned officer (NCO) on or about 24 May 1981. His punishment consisted of reduction to private/E-1 (suspended for 60 days), forfeiture of \$116.00, 14 days extra duty and 14 days restriction.
- c. DA Form 2627 shows the applicant received NJP on 23 July 1981 for dereliction of duty for failing to stay awake while on guard duty; his punishment consisted of forfeiture of \$116.00 and correctional custody for 7 days.
- d. The Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Progress Report, 1 September 1981 shows the applicant was mandatorily referred to community drug and alcohol assistance center (CDAAC) for counseling and rehabilitation for abuse of alcohol. His program started on 1 September 1981 and ended

on 5 November 1981. The applicant indicated that he understood fully but he refused to make an abstinence commitment. While involved in counseling he admitted to continued abuse and does not appear motivated to change his behavior and possesses little potential to become an asset to himself and his unit. The counselor recommended that the applicant be declared a rehab failure.

e. DA Form 2627 shows the applicant received NJP on 23 September 1981 for drunk and disorderly in his quarters in Germany. His punishment consisted of 14 days extra duty.

f. DA Form 4126-R (Bar to Reenlistment Certificate), 23 January 1982 shows he had been a disciplinary problem since his arrival in the unit. It was recommended that he not be granted another term of service. The bar was approved on 29 January 1982.

g. Counseling's between 27 January 1982 and undated show the applicant was a severe discipline problem and barred from reenlistment, and another counseling which reflects he was doing very good in the CDAAC program and his job performance. He would be recommended to be released from the program and recommended for promotion.

h. DA Form 2627 shows the applicant received NJP on 1 February 1982 for unlawfully shoving a Soldier's head into a window weal with his hands and continuation sheet discussed above His punishment consisted of forfeiture of \$175.00 per month for two months, 30 days correctional custody (suspended for 150 days).

i. On 19 February 1982 the punishment was vacated. The unexecuted portion of the punishment would be duly executed.

j. The applicant was counseled on 16 March 1982 for continuing to abuse alcohol and continuing to be a discipline problem his actions being under the influence of alcohol (drunk and disorderly).

k. The applicant's immediate commander notified him on 15 March 1982 he was initiating action to discharge him from the U.S. Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separation-Enlisted Personnel), Chapter 9, for alcohol abuse and recommended a under honorable conditions (General) discharge.

l. The applicant acknowledged receipt on 16 March 1982. The applicant consulted with counsel on 17 March 1982. He did not submit statements in his own behalf.

m. DA Form 3822-R (Report of Mental Status Evaluation), 18 March 1982 shows the applicant did not have significant mental illness, was mentally responsible, able to

distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

n. On 18 March 1982, his commander recommended he be eliminated from the service before the expiration of his term of service for personal abuse of alcohol.

o. The separation authority approved the discharge action on 18 March 1982 under and directed the issuance of a under other honorable conditions (General) discharge and he would not be retained in the individual ready reserve.

p. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 9, by reason of alcohol or other drug abuse on 6 April 1982. His separation code was JFB and reenlistment code 3. His service was characterized as under honorable conditions (General). He completed 1 year, 4 months, and 6 days of net active service.

4. In a prior application to the Army Discharge Review Board (ADRB) on 18 December 1984, the ADRB notified the applicant (by letter) that after careful consideration of his request for an upgrade to his character of service and after reviewing his military records, it was determined he was properly and equitably discharged.

5. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was enrolled in the Army Substance Abuse Program and was received three records of nonjudicial punishment for disrespect, dereliction of duty, and being drunk and disorderly. Additionally, he received several counselings and a vacated nonjudicial punishment. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to alcohol rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

■ [REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.
4. Army Regulation 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at

the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JPB (is to be used for RA Soldiers discharged for the alcohol or other drug abuse).

6. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code 246 has a corresponding RE Code of "3."

7. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

8. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//